



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/163325

PRELIMINARY RECITALS

Pursuant to a petition filed January 18, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on February 17, 2015.

The issue for determination is whether the OIG correctly determined the number of personal care worker (PCW) hours for petitioner pursuant to his prior authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: written submittal of: Kelly Townsend, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is 39 years old, lives with family and is diagnosed with cerebral palsy and quadriplegia.

3. On November 6, 2014, Independence First (IF) requested prior authorization on petitioner's behalf for 70 hours/280 units per week of PCW services (PA # [REDACTED]) to begin January 5, 2015.
4. By a notice dated December 18, 2014, the OIG modified the requested hours for PCW services and granted 64.4 hours/258 units of PCW services.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG allowed time for bathing, dressing, grooming, eating assistance, toileting, mobility, transfers, complex positioning, suppository insertion, digital stimulation, range of motion, and services incidental to task. The petitioner's representatives explained petitioner's limitations. They explained his needs for transfers and complex positioning, but were unable to show that petitioner should be given more time than was already allowed. They also explained how hand cones/washcloths are used to keep his hands

open due to contractures. However, there are no doctor's orders for this, and it is unclear that these hand cones/washcloths even meet the definition for prosthetic/splint/brace. There is no question that the rules require doctor's orders to verify that the PCW services are so authorized. See Wis. Adm. Code §§DHS 107.112(1)(a), 105.17(2)(b)2, and 107.02(2m)(a)19. Without the proper orders, the MA program cannot authorize hours for those cares.

In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary, and technically I am reviewing the OIG's determination. I suggest that the petitioner, his provider(s), and the medical specialists he sees review his PCW needs and that they provide increased documentation to support a new request for PCW time. They should also follow up on the OIG Consultant's recommendation to find a DME provider to explore what, if any, DME may be helpful for petitioner's positioning needs prior to submitting a new PA.

I therefore must conclude that the OIG was correct in its modification of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services he requests are necessary, and that has not been done. As stated above, IF may be able to file another prior authorization request correcting the problems and explaining more fully the need for the hours. An estimated time schedule could help in showing the OIG the hours needed, what specific ADLs require assistance and what specific assistance is provided, what limitations petitioner experiences that require assistance, and the time involved for each task. This is not intended to diminish the challenges petitioner and his family face, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly modified the petitioner's PA request for PCW hours.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

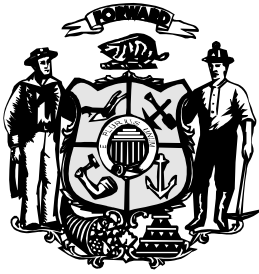
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of March, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 31, 2015.

Division of Health Care Access and Accountability